

COUNTRY Yugoslavia
SUBJECT Danube Navigation Agreement

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- Q. Specifically, what are Yugoslavia's intentions for the change of the existing agreement between herself and Rumania for the operation of the Iron Gates.
- A. The Administration set up by the agreement concluded after the war, has the character of alienis rebus gestio. The name of the Administration, according to the provision of the agreement is "The Provisional Iron Gate Administration at the Permanent International Commission of the Danube" and the title of the representatives of the participating countries is "Delegate of to the Provisional Iron Gates Administration at the Permanent International Commission of the Danube"! - Note the term Permanent International Commission of the Danube. The word Permanent was not even contained in the official title of the Commission before the war.

In its documents the Administration refers to itself by the above title, and the representatives sign the documents with the above title. Furthermore, the agreement refers to provisions of the pre-war agreements and pledges the countries to observe the rules of these agreements. As the agreement clearly contains recognition of pre-war international acts regulating the status of the Danube, the Foreign Office realized that such a document, bound to be disclosed at a future conference on the Danube's status, could prove rather embarrassing if the Foreign Office argued that changed circumstances rendered all previous international acts non-existent. It was therefore suggested that a new agreement be made and so phrased as to give no recognition to the validity of the pre-war status. No change in the operation of the Gates was contemplated at that time, however.

During the war and after, when agreements and treaties with or concerning the "democratic countries" were concluded, a terminology was employed which, having by continuous practice achieved a commonly recognized meaning, was considered sufficient to regulate the given issue. Yet, it has been proved in many instances, that the terminology so employed could be made meaningless by simply divesting the terms employed of their adopted meaning, and by taking as granted everything not explicitly forbidden or clearly defined, with the "democratic countries" pretending to remain strictly within the letters of the acts. Recent international documents such as the ITO charter have therefore incorporated safeguards. Such safeguards will probably be necessary in the case of Danube agreements.

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The aim of the "democratic countries" is to secure domination on the Danube, and to exclude "imperialistic powers" from it. By installing puppet governments in the majority of the littoral states and by gaining actual control and hold of the majority of ships plying between the Delta and Regensburg by means of the mixed companies, they have practically achieved domination. As long as the principle of free navigation is maintained, however, they cannot achieve exclusion of the "imperialistic powers".

Yet there is danger in the term, "free navigation": it has ostensibly lost its original meaning. Cabotage long ago ceased to be regarded as an element of "free navigation". The term has also lost a part of its meaning which was considered inherent in it, in fact which was the very reason for its introduction, i.e. commercial equality. Obviously there can be no commercial equality when every commercial interchange is a result of government-made agreements and the private citizen in the Soviet orbit is excluded from foreign trade which has become a state monopoly.

At present, the practical possibilities of free navigation on the Danube are restricted to:

- (a) securing, for vessels of all flags, access to the utmost parts of the river;
- (b) securing, for companies based in countries in the Danube area but outside of the Soviet orbit, all the accessories necessary to maintain navigation in the Soviet sphere. These accessories would include warehouses, ports, pilots, and winter harbor facilities.

If proper safeguards are not incorporated in the Danube agreement, the riparian states will have many loopholes by which they can render navigation on the Danube practically impossible while still maintaining the letter of the law. They could, for example, assert that mixed companies are entities separate from the state, then transfer all navigation facilities to the mixed companies and disown all responsibility for any violations of the free navigation principle which the companies may subsequently make.

The provisions contained in Article 23 of the Danube Statute regulating transit formalities are strict. They could be made more strict by the agencies entrusted with enforcing them. They could also be changed by the riparian states to such an extent that it would be difficult not to violate them unintentionally. It is easy to imagine the possibilities of "unintentional" violations by "undesired" vessels, and the exploitation of such incidents by the riparian states eager to defend their "sovereign rights" and "undertake measures to prevent future encroachments by imperialistic powers, etc." History records previous instances where the principle of free navigation was proclaimed, then frustrated by the same powers who had proclaimed it. The Treaty of Mainz in 1831, for example, provided for free navigation of the Rhine. A provision inserted in the treaty, however, made possession of a navigator's license obligatory for all ship's masters but, at the same time, declared the masters of foreign vessels ineligible to receive such a license.

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